IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR

WRIT PETITION NO. 4495 OF 2006

1. Kamrujjama Amanatali Bohra
   aged about 73 yrs., Occp. Agriculturist,

2. Ku. Jarina Sultana d/o Kamrujjama
   aged about 39 yrs., Occp. Agriculturist,
   Both R/o Kusumkot Bujruk,
   Tah. Dharni, Distt. Amravati. :: PETITIONERS

-: Versus :-

1. The Tahsildar, Dharni,
   District – Amravati.

2. U.S. Rathod,
   Tahsildar, Dharni,
   Distt. Amravati.

3. Narayan s/o Dokra Bhavaskar,
   aged about 38 yrs., Occp. Agriculturist

4. Mohammed Ilias s/o Mohd. Altaf,
   aged about 44 yrs., Occp. Agriculturist,
   Both R/o Kusumkot Bujruk,
   Tah. Dharni, Distt. Amravati. :: RESPONDENTS

Mr. N. R. Saboo, Advocate for the petitioners.
Mr. J. B. Jaiswal, A.G.P. for respondent No. 1 and 2.
Mr. V. M. Deshpande, Advocate for respondents No. 3 and 4.

CORAM : **A. B. Chaudhari, J.**

DATE : **24th July, 2007**

ORAL JUDGMENT :

1. Rule. By consent rule is made returnable forthwith.

2. Heard Mr. Saboo, learned Counsel for the petitioners, Mr. Jaiswal, learned Assistant Government Pleader for respondents No. 1 and 2 and Mr. V. M. Deshpande, learned Counsel for respondents No. 3 and 4.

3. By the present writ petition the petitioners seek to challenge the order dated 30/5/2006 made by the Tahsildar, Dharni in the matter of grant of 10 ft. way through Dhura between land survey nos. 2 and 3. In normal course, the petitioner ought to have availed the alternate remedy available namely by filing revision before the Sub Divisional Officer. But in the instant case the matter had once came to this Court in Civil Revision Application No. 8 of 2004 wherein on 05/10/2005 on the statement made by the learned Counsel for the parties in that proceeding, this Court made an observation while disposing

of the revision application that respondents were claiming right over a Dhura separating field survey Nos. 2 and 3 and with that observation the revision application was disposed of.

4. Now, the Tahsildar has again made an order and the grievance that is made by the learned Counsel for the petitioners is that pursuant to the observations made by this Court, the Tahsildar ought to have made the order inconsonance thereof. According to him, the Tahsildar has made an order which is contrary to the said observations of this Court. This is the reason why I am directly entertaining this writ petition.

5. After hearing the learned Counsel for the rival parties, it appears that on 01/3/2007 this Court made observation having heard the learned Assistant Government Pleader that way of 10 ft. width was granted only after the spot inspection by the Tahsildar and that is the reason why this Court ordered the Tahsildar to produce that record of inspection. Today, the learned A.G.P. has

produced the spot inspection note along with pursis dated 12/4/2007. But this spot inspection note is blissfully silent about 10 ft. width of Dhura. That being the crux, it appears that the Tahsildar has missed to record the width of Dhura. Since there is dispute about the width of Dhura, it will be appropriate for the Tahsildar, Dharni again to decide the matter afresh by actually visiting the spot in presence of the parties and take required measurements in their presence and after considering objection, if any, make necessary orders thereafter.

6. In the result, the petition is partly allowed. The impugned order is quashed and set aside. The Tahsildar, Dharni is directed to decide the matter afresh in the light of the observation made above within a period of six months from today.

7. Rule accordingly. No order as to costs.

JUDGE

WWL